

STATE OF SOUTH CAROLINA

IN RE:

Intrastate Universal Service Fund

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 1997-239-C

(Please type or print)

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DOCKETING INFORMATION (Check all that apply)
☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously
☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certifica
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigat
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input checked="" type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discove
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	



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COLUMBIA, SOUTH CAROLINA

July 17, 2008

VIA ELECTRONIC FILING

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**Re: Proceeding to Establish Guidelines for an Intrastate USF
Docket No. 1997-239-C**

Dear Mr. Terreni:

Enclosed for filing on behalf of the South Carolina Cable Television Association, CompSouth, tw telecom of south carolina llc, and Nuvox Communications Incorporated (collectively "CLECs") please find the CLECs' Reply to Responses of the Office of Regulatory Staff and the SCTC. By copy of this letter we are serving the reply on all parties of record. If you have any questions, please have someone on your staff contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1997-239-C

IN RE:)	
)	
)	REPLY OF SOUTH CAROLINA CABLE
)	TELEVISION ASSOCIATION,
Proceeding to Establish Guidelines for)	COMPSOUTH, tw telecom of south
an Intrastate Universal Service Fund)	carolina llc, AND NUVOX
(USF))	COMMUNICATIONS INCORPORATED
)	TO RESPONSES OF ORS AND SCTC
)	
)	
)	

On July 3, 2008, The South Carolina Cable Television Association, CompSouth, tw telecom of south carolina llc, and Nuvox Communications Incorporated ("CLECs") filed a return to the motion of the South Carolina Telephone Coalition ("SCTC") and also their own motion seeking to have the Commission conduct a broader review of the operation of the USF. On Friday, July 11th the Office of Regulatory Staff and the SCTC filed responses to the CLECs' motion. CLECs now submit this reply to address several arguments made by those parties.

A. Lines which are parts of unregulated bundles and contract offerings should not receive USF support.

In their motion asking the Commission to review additional issues CLECs pointed to the provisions of Section 58-9-285, enacted in 2005, which deregulated both "bundled offerings" and "contract offerings." The SCTC and

ORS responded to this issue but their responses simply reinforce CLECs' argument that the Commission should review this issue.

The SCTC response on this issue is an explanation that telephone customers have always purchased basic local service along with other services and that there is nothing new about the concept of bundling. This response misses the point. In 2005 when the General Assembly deregulated bundles and contract offerings, this Commission lost jurisdiction over what rates would be charged for those services. That legislative action means that for local services sold as a part of a bundle or contract offering there is no maximum rate set and controlled by this Commission.

Under the terms of Section 58-9-285(B)(1) "[t]he Commission must not: impose any requirements related to the terms, conditions, rates, or availability of any bundled offering or contract offering...." Beginning in 2005, services sold as parts of bundles or contract offerings are no longer the basic local services, subject to a regulated maximum rate, which the USF is intended to support. The Commission should address this issue by revising its guidelines to clarify that lines sold as parts of bundles or contract offerings should not receive USF support.

The ORS response also demonstrates that the Commission should review the USF treatment of lines sold as parts of deregulated bundles or contract offerings. The ORS memorandum does not address the question of whether those lines should be counted for USF support or not. Instead it asserts: (1) that the Commission has not previously addressed this issue and (2) that the current

operation of the USF does not provide a mechanism for reducing the size of the USF because lines are no longer subject to support. Both of these points support the need for a hearing. Surely the Commission should consider the question of whether deregulated lines should be supported and, if the answer is that those lines should not be supported, surely the USF guidelines should be revised so that deregulated lines are not supported.

B. ILECs should be recovering from the USF on a per line basis.

In their motion CLECs asserted that "ILECs are apparently not making" reports that are required by Order No. 2001-996. CLECs argued that, because of an overall reduction in the number of ILEC access lines in South Carolina, the ILECs should be taking less money from the USF. Both ORS and SCTC responded by asserting that the ILECs are making those reports. This is good news, but it certainly doesn't mean that the Commission shouldn't examine the question of what should happen when an ILEC reports a reduction in its USF lines for support.

It appears that ILECs are currently receiving subsidy payments from the USF on a lump sum basis which does not change from year to year even when the ILECs experience a decrease in access lines. CLECs maintain that this Commission's orders require that, as ILECs' access line count decreases, their per line support stays the same and their subsidy payments decrease. Allowing ILECs to continue to receive the same lump sum payment when their line counts are decreasing allows ILECs to receive an increase in per line support which is inconsistent with this Commission's orders.

The USF has been calculated on a per-line basis since its inception. The Commission's orders and guidelines have repeatedly held that ILECs are supposed to be paid based on their number of access lines.

Order No. 2001-419

- "These cost studies provided a cost of service **per access line** for each designated Universal Service support area." ¶ 22
- "The guidelines previously adopted by the Commission, consistent with state law, permit carriers of last resort to receive funding **for each individual single-party residential or single-line business line** regardless of its classification as a primary or secondary line." ¶ 24

Order No. 2001-996, Guidelines

- "A COLR that provides USF services using its solely-owned and constructed network will be entitled to receive the full amount of **per-line USF support.**" p. 5.
- "The Commission-approved costs of providing universal service on a **per line basis** for any particular LEC shall remain in place until such time as that LEC's State USF withdrawal exceeds one-third of its company-specific State USF amount." p. 8

Order No. 2001-996, Administrative Procedures

- "High Cost Support: High Cost Support is the amount each COLR receives from the South Carolina Universal Service Fund. This amount is calculated by multiplying the High Cost Support per Line **by the number of eligible access lines served by each COLR.**" p. 1
- "COLRs will receive High Cost Support **based on the number of eligible residential and single business lines** served by such COLR in a designated service area." p. 3

Order No. 2004-452 (Order cited by the SCTC in its memo)

- "The State USF is designed so that the amount of funding is calculated at the time the funding is implemented and converted to a per-line amount for portability purposes. See Section IV.D. of State USF Administrative Procedures, attached as Exhibit B to

Commission Order No. 2001-966. Once the State USF is calculated on a per-line basis, the amount of funding received by a particular company will track along with the gain or loss of access lines.” ¶12.

The orders of this Commission are clear that ILECs are supposed to be recovering on a per line basis. From the responses of SCTC and ORS it is clear that they are not. Surely this Commission should conduct a hearing on this issue. If there is ambiguity about what happens when an ILEC loses access lines then that could be addressed. If ILECs want to propose revisions in the definition of High Cost Support so that it is not derived by multiplying a per line support number by its number of access lines then that could be addressed. This issue was not specifically addressed by the Supreme Court. To the extent that the Court approved the Commission’s orders implementing the USF - as argued by ORS - it approved the language cited above requiring that ILECs recover on a per line basis. The Commission should conduct a hearing on this issue.

C. The Supreme Court opinion is not a reason for refusing to have a hearing on the operation of the USF.

Both ORS and the SCTC argue that the decision in Office of Regulatory Staff v. South Carolina Public Service Commission, 374 S.C. 46, 647 S.E.2d 223 (2007), is a reason for this Commission not to have a hearing on the broader issues proposed by CLECs. That argument is not supported by the opinion itself. In it the Court repeatedly emphasized that this Commission would retain control of the USF and could adjust its operation in the future. In fact, in footnote 15 the

Court expressly advised this Commission to conduct the type of review requested by CLECs.

We note our ruling would not preclude future reviews of challenges to the fund's size. We suggest the Commission engage in periodic review of the fund's size to enhance the requirements of federal and state law.

Office of Regulatory Staff v. South Carolina Public Service Commission, 647 S.E.2d at 230, n. 15.

This Commission has not had any hearing relating to the USF since September 2004, and that hearing related solely to a request for additional funding by one ILEC. Under the approach advocated by SCTC in its motion to dismiss the hearing there would not be a hearing on any USF issues unless and until an ILEC triggers a hearing by asking for additional USF funding. That approach flies in the face of the holding by the Supreme Court which suggested that the Commission hold periodic reviews of the fund.

Conclusion.

CLECs are not asking for an order from the Commission ruling on the issues stated in their motion; they are only asking for a hearing on these issues. This Commission has not conducted any substantial review of the operation of the fund in years and, as demonstrated by the briefing on these motions, there are serious issues which must be addressed. CLECs urge the Commission to follow the suggestion of the Supreme Court and conduct a thorough review of the operation of the USF.

Dated this 17th day of July, 2008.

Respectfully submitted,

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Dated at Columbia, South Carolina this 17th day of July, 2008.

A handwritten signature in cursive script, reading "Leslie Allen", written in dark ink.

Leslie Allen